



South Dakota

Legislative Research Council

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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Sen. Jean Hunhoff, Chair
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James Fry, Director
Doug Decker, Code Counsel

August 5, 2009

Rolayne Ailts Wiest
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Dear Ms. Ailts Wiest:

The Public Utilities Commission has proposed rules establishing ARSD chapter 20:10:37 to administer pipeline safety rules. We have reviewed the proposed rules, scheduled for hearing on August 18, 2009, and approve the rules for legality with the following exceptions:

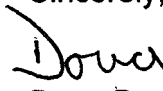
20:10:37:01 – It may be appropriate to add a definition for the term, incident docket. The term, operator, is occasionally used in the proposed rules. Please use the term, pipeline operator, as defined in SDCL 49-34B-1.

20:10:37:06 – The phrase, reasonable time, is used this section. Please provide a time frame expressed in days or weeks whenever possible.

20:10:37:14 – How does the pipeline operator know what date the report was filed with the commission?

This letter is based on a preliminary review of your rules. Attached are your rules edited for form and style pursuant to SDCL 1-26-6.5 and directions for submitting the final draft of the rules. If you have any questions, please don't hesitate to call me or the staff member who has reviewed your rules.

Sincerely,


Doug Decker
Code Council

DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

RULES REVIEW MEETING SCHEDULE: The Interim Rules Review Committee has set the following tentative meeting schedule for the 2009 interim: September 1, October 6, November 18, and December 15.

A. FINAL DRAFT TO LEGISLATIVE RESEARCH COUNCIL: When the final draft of the adopted rules is brought to this office for signature for legality and for form and style, please include the following items:

1. The edited copy of the first draft;
2. One legible copy of the final draft, to be left here. The final draft should be double spaced, contain only rules being amended, repealed, or adopted, and show changes from current printed rules by means of overstrikes and underscores;
3. The original Form #11 which contains the signature of the officer empowered to adopt the rules or the signatures of a majority of the members of a board or commission which has the rule-making authority; and
4. Copies of the following:
 - a. The minutes of all public hearings, (a summary of the minutes if needed); and
 - b. The affidavit of mailing to Rules Committee members – Form #12.

B. SERVICE ON COMMITTEE: The following information is to be served on the interim Rules Review Committee at least five days before the committee meeting date:

1. The final draft of the adopted rules (three-holed punched and numbered by page);
2. The minutes of the public hearing;
 - a. Include a summary of the hearing if a verbatim transcript is used;
 - b. Include a summary of any subsequent hearing if the public hearing is continued or final action is taken at a later date;
3. A summary of the written comments or copies of the written comments;
4. The Impact Statement on Small Business;
5. The Fiscal Note; and
6. Agency financial resource information if the agency proposes a rule to increase a fee.

First class mail, e-mail, or both should be used (See Form #12).

C. FILING WITH THE SECRETARY OF STATE'S OFFICE (After appearing before the Interim Rules Review Committee)

1. Each agency must complete and sign all documents before filing the certificate of compliance with Chapter 1-26 and the final draft of the rules with the Secretary of State's Office. Although it is not required by statute, the Secretary of State's Office would like to have a copy of the approval signature sheet with the filing of the final draft and the certificate.

ARTICLE 20:10

PUBLIC UTILITIES

Chapter

- 20:10:01 General rules of practice.
- 20:10:02 General motor carrier rules, Repealed.
- 20:10:03 Regulated motor carriers, Repealed.
- 20:10:04 Exempt motor carriers, Repealed.
- 20:10:05 General telecommunications company rules.
- 20:10:06 Telecommunications records.
- 20:10:07 Telecommunications subscriber billing rules.
- 20:10:08 Telecommunications credit.
- 20:10:09 Refusal of telecommunications service.
- 20:10:10 Disconnection of telecommunications service.
- 20:10:11 Public grain warehouses.
- 20:10:12 Grain buyers.
- 20:10:13 Public utilities rate filing rules.
- 20:10:14 Procedure rules for public utilities, Repealed or transferred.
- 20:10:15 General gas and electric rules.
- 20:10:16 Gas and electric utility records and public information rules.
- 20:10:17 Gas and electric customer billing rules.
- 20:10:18 Gas and electric service rules.
- 20:10:19 Establishment of gas and electric credit.
- 20:10:20 Refusal and disconnection of gas and electric service.
- 20:10:21 Energy facility plans.

- 20:10:22 Energy facility siting rules.
- 20:10:23 Gas and electric advertising rules.
- 20:10:24 Interexchange carrier and classification rules.
- 20:10:25 Telecommunications facility construction notice rules, Repealed.
- 20:10:26 Master metering variance rules.
- 20:10:27 Telecommunications switched access filing rules.
- 20:10:28 Telecommunications separations procedures.
- 20:10:29 Telecommunications switched access charges.
- 20:10:30 Assignment of N11 dialing codes.
- 20:10:31 Assessment of fees for intrastate gas pipeline operators.
- 20:10:32 Local exchange service competition.
- 20:10:33 Service standards for telecommunications companies.
- 20:10:34 Prohibition against unauthorized changing of telecommunications company and charging for unauthorized services.
- 20:10:35 Telecommunications services.
- 20:10:36 Small generator facility interconnection.
- 20:10:37 Pipeline safety rules.

Chapter 20:10:37

Pipeline Safety Rules

Section

- 20:10:37:01 Definitions.
- 20:10:37:02 Scope and application.
- 20:10:37:03 Applicability of procedural rules.
- 20:10:37:04 Inspections.
- 20:10:37:05 Pipeline operator's obligations.

- 20:10:37:06 Inspector's reporting requirements.
- 20:10:37:07 *Pipeline* Operator's receipt of the inspector report.
- 20:10:37:08 Probable non-compliance inspection results.
- 20:10:37:09 Pipeline operator's inspection response.
- 20:10:37:10 Pipeline operator's incident reporting requirements.
- 20:10:37:11 Inspector's incident investigation.
- 20:10:37:12 Post-incident investigation meeting.
- 20:10:37:13 Incident report.
- 20:10:37:14 Pipeline operator's obligations upon completion of inspector's incident report.
- 20:10:37:15 Pipeline operator's failure to reply.
- 20:10:37:16 Request for hearing.
- 20:10:37:17 Change of ownership.
- 20:10:37:18 Notice requirements for transmission line construction.
- 20:10:37:19 Annual report.

20:10:37:01. Definitions. Terms defined in SDCL 49-34B-1 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

- (1) "Inspector," a pipeline safety inspector employed by, or contracted as an agent of the commission;
- (2) "Incident," is any of the following events:
 - (a) A release of gas from a gas pipeline facility or of liquefied natural gas or gas from a liquefied natural gas facility and
 - (i) A death, or personal injury necessitating in-patient hospitalization; or
 - (ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more:

- (b) An event that results in an emergency shutdown of a liquefied natural gas facility; or
 - (c) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subdivisions (a) and (b) above;
- (3) “Inspection,” a review of the books, files, records, reports, supplemental data, other documents and information, plant, property, and facilities of a pipeline operator to ensure compliance with applicable pipeline safety standards;
- (4) “Inspection report,” the report drafted by an inspector after an inspection of any type, except for an incident;
- (5) “Incident report,” the report drafted by an inspector after an incident; and
- (6) “Pipeline safety program,” the program administered by the commission with regulatory jurisdiction over the safety standards and practices of all jurisdictional intrastate natural gas and other gas pipelines within South Dakota.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-27.

20:10:37:02. Scope and application. This chapter sets forth the procedures and standards to be used for pipeline safety inspections, the enforcement of pipeline safety standards, and the imposition of civil penalties on pipeline operators for failing to meet the federal pipeline safety standards adopted by chapter SDCL 49-34B. These rules ~~shall~~ ^{only} apply ~~only~~ to those pipelines within the jurisdiction of the commission pursuant to SDCL Chapter 49-34B.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-12, 49-34B-27.

20:10:37:03. Applicability of procedural rules. Except as otherwise provided in this chapter, the commission's procedural rules set forth in chapter 20:10:01 govern proceedings under this chapter.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-27.

20:10:37:04. Inspections. An inspector shall conduct periodic inspections and spot checks of records and property in the possession, custody, or control of the pipeline operator to determine compliance with applicable pipeline safety standards. Inspections may be conducted pursuant to routine scheduling by the inspector, upon a complaint received from a member of the public, upon information obtained from a previous inspection, or when there is cause to believe that a threat to public safety may exist.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-7, 49-34B-27.

20:10:37:05. Pipeline operator's obligations. Each pipeline owner, ^{pipeline} operator, officer, employee, and representative shall cooperate with the inspector and the commission in the administration and enforcement of this chapter and in the investigation of violations or alleged violations involving pipeline operator or intrastate pipeline facilities owned or operated by the operator. Cooperation includes making available all company books, files, records, reports, supplemental data, and making readily accessible all company plant, property, and facilities that the inspector may reasonably require in the administration and enforcement of this chapter.

Pipeline

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-27.

20:10:37:06. Inspector's reporting requirements. Regardless of the inspection type, the inspector shall complete a post inspection report within ~~a reasonable time~~ ^{days} upon completion of the inspection itself. The report shall include a summary of probable noncompliance issues if any exist. As applicable, the inspection report may include a remediation plan wherein specific corrective action and a ~~reasonable~~ time frame for completion shall be stated when probable noncompliance issues exist.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-27.

Pipeline

20:10:37:07. Operator's receipt of the inspector report. The inspector shall provide a copy of all inspection report materials to the pipeline operator. The report shall be provided to an authorized official of the ^{pipeline} operator including an officer, manager, or governing board member if probable violations or warnings, as defined in § 20:10:37:08, are believed by the inspector to exist.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-27.

20:10:37:08. Probable non-compliance inspection results. The inspector shall categorize potential noncompliance in one of the following three categories to be specified in the inspection report:

- (1) A notice of probable violation may be issued if the inspector has good cause to believe a serious or repeat violation of applicable pipeline safety standards has occurred. The written notice of violation shall include a statement of the statute, rule, or regulation allegedly violated by the pipeline operator and a description of the factual basis on which the allegation is based. If a civil penalty is proposed, the report shall state the amount of the proposed civil

penalty. A warning in subdivision (2) may be elevated to a notice of probable violation by the pipeline program manager if warning items are not remedied in a timely fashion;

(2) A warning may be issued for a probable violation of a less serious nature or a first time violation. The warning may include specific corrective actions that must be taken to correct the situation and the time frame within which such actions shall be completed; and

(3) A notice of concern may be used to inform the pipeline operator where best industry practices are not being followed but no direct code violation exists. The notice of concern designation shall be used for informational purposes only to aid the pipeline operator in managing as safe and effective pipeline as possible. No pipeline operator action is required.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-27.

20:10:37:09. Pipeline operator's inspection response. Upon receipt of a written notice of probable violation or warning, the pipeline operator shall respond to the inspector within 30 business days in any one of the following ways:

(1) Admit to the probable violation or warning and agree to the proposed civil penalty or corrective action, or both, ~~if they exist.~~ ^{Any proposed} Civil penalties ^{is} are subject to commission approval;

(2) Respond to the probable violation or warning and agree to the proposed civil penalty or corrective action, or both, ~~if they exist.~~ ^{Any proposed} Civil penalties ^{is} shall be subject to commission approval;

(3) A written dispute of the reported probable violation or warning at which time the pipeline operator may request a hearing before the commission if the dispute cannot be resolved with the inspector; or

(4) A written dispute of the proposed civil penalty or proposed corrective action, or both, at which time the pipeline operator may request a hearing before the commission.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-12, 49-34B-27.

20:10:37:10. Pipeline operator's incident reporting requirements. ~~As soon as reasonably possible following discovery of an incident,~~ ^{*If an incident is discovered,*} the pipeline operator shall notify the commission by phone of any incident on the pipeline system owned or operated by the pipeline operator. The notification shall include the identity of the pipeline operator, the time and location of the incident, whether there are ascertainable fatalities, personal injuries requiring inpatient hospitalization, or property damage, or both, and any other significant facts and public dangers relevant to the incident. This reporting requirement does not relieve the pipeline operator of the federal reporting requirements as found in the Code of Federal Regulations, title 49, part 191 ^{*as of July 1, 2009.*} This reporting requirement requires personal notification to an inspector. Inspector contact information shall be provided by the commission.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-27.

20:10:37:11. Inspector's incident investigation. Each incident shall be docketed with the commission by an inspector upon initiation of an investigation. An incident investigation shall be conducted by an inspector and may include pipeline operator personnel interviews, the inspection of failed equipment or pipe, the issuance of a subpoena by the commission for failed equipment or pipe relating to the incident for independent preservation, ordering of independent laboratory tests of failed pipe or equipment, viewing related documents, and other reasonable investigatory measures as needed to complete a comprehensive independent investigation. The pipeline operator has ten business days to respond to inspector requests for information. Disputes shall be resolved by the commission.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-27.

20:10:37:12. Post-incident investigation meeting. Upon the conclusion of the inspector's investigation and all laboratory or other tests and discovery and before the inspector's filing of a formal incident report, the inspector shall notify the operator that the inspector has completed the investigation. The operator or the inspector may request a meeting to discuss investigation findings and incident report contents prior to or following the filing of an incident report by the inspector.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-27.

20:10:37:13. Incident report. ~~As soon as reasonably possible~~ ^{After the} information has been gathered and the investigation ^{is} concluded, ^{the} an inspector shall file an incident report to summarize the investigation and report on findings. The inspector's report shall be filed with the commission. An incident docket shall conclude upon the commission's acceptance or rejection of the inspector's report and determination of what pipeline violations occurred, if any, what corrective actions shall be required, if any, and what civil penalties are appropriate, if any.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-12, 49-34B-27.

20:10:37:14. Pipeline operator's obligations upon completion of inspector's incident report. Upon filing of the inspector's incident report with the commission, the pipeline operator shall respond, in writing, within 30 business days and state whether the pipeline

How does the pipeline operator know what date the report was filed with the commission?

operator agrees with the report and recommendations or disputes any portion of the report and recommendations.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-12, 49-34B-27.

20:10:37:15. Pipeline operator's failure to reply. A failure to reply to either an inspection report according to § 20:10:37:09 or an incident report according to § 20:10:37:14 shall be considered consent to the report in its entirety. *However, Any proposed is* ~~Civil penalties are~~ subject to commission approval.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-12, 49-34B-27.

20:10:37:16. Request for hearing. Either the pipeline safety program manager or pipeline operator may, at any time, request a hearing before the commission to resolve any issue within the jurisdiction of the commission.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-5, 49-34B-7, 49-34B-12, 49-34B-27.

20:10:37:17. Change of ownership. Each pipeline operator, upon finalization of an agreement to purchase or sell a jurisdictional gas pipeline facility subject to the provisions of the Code of Federal Regulations Title 49, Part 192, *as of July 1, 2009,* must, within 30 business days, submit to the commission's pipeline safety program a written notification of this agreement. This rule ~~shall~~ *does* not apply to transactions *any* *made pursuant to* ~~under~~ SDCL 49-34A-35.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-27.

20:10:37:18. Notice requirements for transmission line construction. Each

transmission pipeline operator within the jurisdiction of the pipeline safety program shall, prior to the construction of a new transmission line, or a relocation or replacement of a transmission line as defined in the Code of Federal Regulations, Title 49, Part 192: *as of July 1, 2009.*

(1) Submit the information below to the commission's pipeline safety program no later than 60 days prior to the commencement of construction, relocation, or replacement:

- (a) *Pipeline* Operator's name and mailing address;
- (b) Estimated dates construction is scheduled to begin and end;
- (c) Map showing location and proposed route of pipeline;
- (d) Identified gas transmission Integrity Management Program high consequence area, if applicable;
- (e) Proposed steel pipeline specifications, including size, weight, grade, wall thickness, and coating;
- (f) Landfill gas plastic pipe specifications, including size and Standard Dimension Ratio;
- (g) Proposed design and maximum allowable operating pressure of pipeline;
- (h) Pressure test procedures and method of pressure test prior to operations;
- (i) Proposed type of cathodic protection;
- (j) Minimum burial depths of pipeline at time of construction;
- (k) Proposed location and type of pipeline safety equipment;
- (l) Proposed type of highway and water crossing, such as whether it will be bored and cased, bored only, or trenched;
- (m) Written construction procedures;

(n) Name of construction company if known at the time of filing the Notice;

and
Pipeline
(o) Operator contact name and phone number;

(2) In the event of an emergency, as defined in the pipeline operator's operations manual, give telephonic notice of emergency construction, relocation, or replacement to the commission's pipeline safety program;

(3) Significant construction modifications shall be submitted to the pipeline safety program; *and*

(4) Submit the information below to the commission's pipeline safety program no later than 60 days prior to the commencement of operation:

(a) Operation and maintenance manual;

(b) Emergency procedures;

(c) Anti-drug and alcohol plan;

(d) Public Awareness plan;

(e) Damage prevention program;

(f) Abnormal operations; and

(g) Operator's qualification plan.

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 40-34B-8, 49-34B-27.

20:10:37:19. Annual report. Except as provided below, each pipeline operator shall submit to the commission a copy of its United States Department of Transportation Form RSPA F 7100.1- 1 and/or Form RSPA F 7100.2-1 which are completed to meet federal regulatory obligations. A copy of the report shall be submitted by March 15 each year for the preceding calendar year.

The annual report is not required to be submitted for petroleum gas systems which serve fewer than 100 customers from a single source or master meter systems.

This reporting requirement does not relieve the operator of its federal reporting requirements as found in 49 C.F.R. §§ 191.11 and 191.17. *as of July 1, 2009*

Source:

General Authority: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-6, 49-34B-7, 49-34B-27.